IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

C.W.P. No.10109 of 2006
Date of Decision:15.11.2006

Bayer Crop Science Ltd., Mumbai

.....Petitioner

Vs.

The State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. K.L.Goyal, Advocate for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab.

****

ADARSH KUMAR GOEL, J.

In this writ petition, the challenge is to the order dated 24.4.2006, Annexure P.10 passed by respondent No.3 imposing penalty and tax on the petitioner.

Facts noticed in the said order are that on 11.4.2006 at 7:00 a.m. truck No.JK02D-9038 loaded with Fenoxa P. Ethyl Tech. reported at the ICC Madhopur along with documents. On verification, the detaining officer was of the view that the goods were not properly described in the goods receipt (GR). A notice was issued to the consigner/consignee through driver-cum-in charge of the goods. The petitioner contested the notice on the strength of an order dated 12.5.1999 passed by the Sales Tax Tribunal, Annexure P.7. The respondent No.3 in its order observed that goods were not pesticides which were tax free under entry 16 of Schedule `A' appended to the Punjab VAT Act, 2005 and therefore, there was misdescription in the documents attracting penalty and tax.

Case of the petitioner is that apart from order of the Tribunal Annexure P.7 holding such goods to be pesticides and insecticides and thus tax free, he also obtained statutory clarification Annexure P.11 dated 21.6.2006 from Excise and Taxation Commissioner under Section 85 of the

Act, to the effect that the goods in question were tax free. It was submitted that the impugned order was in violation of order of the Tribunal Annexure P.7 as well as clarification Annexure P.11. It was also submitted that even otherwise respondent No.3 had no jurisdiction to detain the goods as there was no bonafide doubt about description of goods, quantity of goods and identity of consignor and consignee.

Stand taken by the respondents is that the impugned order was valid.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the State submitted that though the impugned order was a valid order on the date when it was passed, as on today in view of clarification Annexure P.11, the order could not be defended and it could not be said that there was any misdescription and that the goods were not tax free.

In view of stand taken by learned counsel for the State that as on today, the impugned order could not be defended, we do not consider it necessary to go into the question whether the impugned order was passed bonafide or whether the detention of goods was called for or not.

In view of stand taken by learned counsel for the State itself, we set aside the impugned order Annexure P.10.

The writ petition is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

November 15, 2006 **(RAJESH BINDAL)**
renu **JUDGE**